

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) Chapter 11
W. R. GRACE & CO., *et al.*,) Case No. 01-1139 (JKF)
) Jointly Administered
Debtors.) **Re: Docket Nos. 21809, 21032, 21723**
) [Proposed] Objection Deadline: May __, 2009
) [Proposed] Hearing Date: June 1, 2009

**PLAN PROPONENTS' MOTION FOR LEAVE FROM THIS COURT'S SCHEDULING
ORDER AND TO SHORTEN NOTICE PERIOD ON: MOTION OF THE PLAN
PROPONENTS TO STRIKE EXPERT REPORT AND
EXCLUDE TESTIMONY OF BERND G. HEINZE**

The Plan Proponents hereby move this Court pursuant to Del. Bankr. L.R. 9006-1(e), Rule 9006(c) of the Bankruptcy Rules and section 102 of the Bankruptcy Code, for leave from this Court's Scheduling Order and to shorten the notice period with respect to the "*Motion of the Plan Proponents to Strike Expert Report and Exclude Testimony of Bernd G. Heinze*" (Docket No. 21032) (the "Motion"), so that the Motion may be heard at the June 1, 2009 Omnibus hearing and setting the Objection Deadline on the Motion for a time convenient to the Court. In support of this Motion, the Plan Proponents respectfully represent as follows:

1. Pursuant to the Second and Third Amended CMOs, initial expert reports were due on March 16, 2009 and rebuttal reports on May 15, 2009.
2. On March 16, 2009, Arrowood served the Preliminary Expert Disclosure Statement of Bernd G. Heinze ("Heinze Report"). The document utterly fails to make the disclosures required by Rule 26(a)(2), and Arrowood has not supplemented it in the intervening months.
3. On May 15, 2009, Arrowood served its final witness list for Phase I and Phase II. *See Docket No. 21723.* Arrowood included Mr. Heinze on its list of final witness designations.

4. The Debtors have had several conversations with counsel for Arrowood since receiving Arrowood's final witness designations with respect to Mr. Heinze and the matters addressed in the Motion to Strike. However, the parties have been unable to reach an agreement on these matters regarding Mr. Heinze.

5. Given that Arrowood apparently intends to call Mr. Heinze as a witness at the confirmation hearing, Arrowood's failure to comply with Rule 26(a)(2) with respect to the Heinze Report must be brought to Court's attention at this time.

6. Confirmation discovery is currently ongoing. Pursuant to the Third Amended CMO, Phase II depositions are to conclude on June 15, 2009. Thus, in the event that Arrowood actually attempts to call Mr. Heinze as a witness, the Plan Proponents need to address the issues outlined in the Motion to Strike by June 15, 2009.

7. As a result, the Plan Proponents cannot wait until the June 26, 2009 Omnibus hearing to have the matters with respect to Mr. Heinze resolved. Therefore, the Plan Proponents hereby move to shorten the time for hearing so that its Motion to Strike may be heard at the June 1, 2009 Omnibus hearing.

8. Bankruptcy Rule 9006(c) provides that when an act is required to be done within a specified time by the Bankruptcy Rules "the court for cause shown may in its discretion with or without motion or notice order the period reduced." Similarly, Del.Bankr.LR 9006-1(e) provides in pertinent part that "no motion will be scheduled on less notice than required by these Rules or the Fed. R. Bankr. P. except by Order of the Court, on written motion specifying the exigencies justifying shortened notice."

9. Accordingly, the Plan Proponents file this motion seeking an Order of this Court for leave of the Scheduling Order and shortening the notice period prescribed by Del. Bankr. LR

9006-1(c) to enable the Plan Proponents' Motion to be heard by the Court at the June 1, 2009 Omnibus hearing and for the Court to establish the deadline to object to the Motion at a time convenient for the Court.

10. Given the nature of the relief requested, the Plan Proponents respectfully submit that the limited notice described above is appropriate, as is leave from the Scheduling Order.

WHEREFORE, the Plan Proponents respectfully request the entry of an Order (i) granting the Plan Proponents leave from the Scheduling Order, (ii) shortening the notice period with respect to the Motion, (iii) setting the objection deadline on the Motion for a convenient time to the Court, and (iv) scheduling the Motion for the June 1, 2009 Omnibus hearing.

Dated: May 20, 2009

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